

A Bill for an Act Relating to Uniform Durable Power of Attorney Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM DURABLE POWER OF ATTORNEY ACT**

§ -1 **Definition.** A durable power of attorney is a power of attorney by which a principal designates another as the principal’s attorney in fact in writing and the writing contains the words “This power of attorney shall not be affected by the disability of the principal,” “This power of attorney shall become effective upon the disability or incapacity of the principal,” or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal’s subsequent disability or incapacity.

§ -2 **Durable power of attorney not affected by disability.** All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal’s successors in interest as if the principal were competent and not disabled.

§ -3 **Relation of attorney-in-fact to court-appointed[A fiduciary.]**<sup>1</sup> (a) If, following execution of a durable power of attorney, a court of the principal’s domicile appoints a guardian of the property, or other fiduciary charged with the management of all of the principal’s property or all of the principal’s property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney, the guardian of the principal’s property, or guardian of the principal’s person for consideration by the court if protective proceedings for the principal’s person or property are thereafter commenced. The court shall make its appointment in accordance with the principal’s most recent nomination in a durable power of attorney except for good cause or disqualification.

§ -4 **Power of attorney not revoked until notice.** (a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal’s successors in interest.

§- 5 **Proof of continuance of durable and other powers.** As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in

fact under a power of attorney, durable or otherwise, stating that the attorney in fact did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

§ -6 **Uniformity of application and construction.** This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ -7 **Short title.** This Act may be cited as the Uniform Durable Power of Attorney Act."

SECTION 2. Sections 560:5-501 and 560:5-502, Hawaii Revised Statutes, are repealed.

SECTION 3. If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed.<sup>2</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 8, 1989.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.